

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2002-000473

07/28/2003

HON. ROLAND J. STEINLE

CLERK OF THE COURT  
J. Escarcega  
Deputy

FILED: 07/31/2003

IN RE THE MATTER OF  
DEPT OF ECONOMIC SECURITY (DES)

DIANE G MCGUIRE

AND

TODD A ROGERS

TODD A ROGERS  
17838 N 35TH PLACE  
PHOENIX AZ 85032-1307

KRISTIN M LATHAM  
UP  
DIANE C ROGERS  
13214 N 42ND ST  
PHOENIX AZ 85032

UNDER ADVISEMENT RULING RE: EVIDENTIARY HEARING  
HELD ON July 16, 2003

This matter was taken under advisement after an evidentiary hearing held July 16, 2003 on Petitioners'/Grandparents' Petition for Order to Show Cause Re: Visitation Pursuant to A.R.S. § 25-409. The Court has considered the evidence and arguments presented by the parties. The Court now finds the facts specially and states its conclusions of law thereon as follows.

**FINDINGS OF FACT**

1. The Petitioner, Grandmother has repeatedly filed complaints with CPS. She failed to bring any representative of CPS to court. She failed to produce any admissible evidence the Mother is unfit. She attempted to rely upon unsubstantiated allegations and hearsay. This Court has granted her custody and a parenting plan is in place. Father, Petitioner/Grandmother's son, has regular access and the Petitioner could visit at any time the Father has access. Accordingly, the Petitioner/Grandmother has failed to meet the burden of proof that the Mother is unfit. Therefore, the Court finds that Mother is a fit parent.

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2. Mother has denied visitation. The paternal grandparents desire to exercise visitation time with the grandchild and Mother has not allowed any visits
3. Mother is entitled to a rebuttal presumption that she is acting in the best interest of the child.
4. The grandparents have not presented sufficient facts to overcome the presumption.
5. The Court has further considered all of the factors required under A.R.S. §25-409 and giving “special weight” to a fit parent for determination regarding the current schedule for some during Father's access time.
6. Mother's reasons for the termination of visits are reasonable and prudent expressions of parental judgment.
7. Father has very reasonable access and the grandparents may visit at any time. If there are issues of bonding, which would limit her access during Father's time, the Court finds that these are personal choices, not a legal barrier. The Court will note that Petitioner/Grandmother was the child care person when Father was at work for a period of time.
8. The Court having weighed the credibility of the parties, finds that the motives of the Petitioner/Grandmother are to harass and annoy the Mother, and have nothing to do with the issue of access because she has unlimited access when Father has parenting time.

**CONCLUSIONS OF LAW**

1. The jurisdiction of this Court is invoked pursuant to A.R.S. § 25-409, which authorizes the Court to grant grandparents reasonable visitation rights under certain circumstances.
2. Although the United States Supreme Court has found that application of grandparent visitation statutes may be unconstitutional, *Troxel v. Granville*, 530 U.S. 57 (2000), the Arizona Court of Appeals has upheld the constitutionality of Arizona's statute as written. *Jackson v. Tangreen*, 199 Ariz. 306 (App. 2001).
4. Before it can award reasonable visitation rights under the statute, the Court must find that the visitation rights would be in the child's best interests after considering all relevant factors including certain specific factors enumerated in subsection C of section 25-409.

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5. A fit parent is presumed to act in the best interests of the child and thus special weight must be given by the court to the parent's visitation decisions. *Jackson v. Tangreen*, 199 Ariz. at 310; *Troxel v. Granville*, 530 U.S. at 57.
6. The procedural safeguards contained in subsection C evince a legislative recognition of the "parent's superior right to the custody and care of their children." *Graville v. Dodge*, 195 Ariz. 119, 127 (App. 1999).
7. Those same procedural safeguards further suggest that A.R.S. § 25-409 "applies only in cases in which a parent has denied visitation, not merely limited it." *Jackson v. Tangreen*, 199 Ariz. at 310.
8. Because Mother is a fit parent who has reasonably limited Petitioners' visitation to the time when the child is with the father, the statute has no application. Grandparents are not entitled to greater access to the minor child than deemed appropriate by Mother in the circumstances of this case.
9. Under the standard formulated by Division Two of the Court of Appeals in *McGovern v. McGovern*, 210 Ariz. 172 (App. 2001), Petitioners have not rebutted the presumption that mother is acting in child's best interests when he limits visitation. To conclude otherwise on this record would require the Court to substitute its own judgment for that of a fit parent and thereby fail to give significant weight to Mother's decision not to permit visitation to the extent and in the circumstances that Mother deems to be in the best interests of the child.

Therefore,

**IT IS ORDERED** denying the petition of the Petitioner/Grandparent.

**IT IS FURTHER ORDERED** signing this minute entry as a formal order of the Court pursuant to Ariz. R. Civ. P. 58(a).

/S/ HON. ROLAND J. STEINLE

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JUDICIAL OFFICER OF THE SUPERIOR COURT